

In Re:)	
)	
AREDIA® AND ZOMETA® PRODUCTS)	
LIABILITY LITIGATION)	
)	No. 3:06-MD-1760
)	Judge Campbell/Brown
(MDL No. 1760))	
)	
This Document Relates to:)	
3:7-CV-00239 (<i>Begley</i>))	

For the reasons explained below, the Magistrate Judge recommends that the motion to vacate and dismiss filed by the Novartis Pharmaceuticals Corporation (NPC) (MDL Doc. 6980; Related Case 34) be **DENIED**, and that the actions ordered by the District Judge in his November 5, 2013 order (MDL Doc. 7107) be extended to include this case.

NPC filed a motion on September 10, 2013 to vacate the court's November 26, 2008 order that granted plaintiffs November 21, 2008 motion to substitute. (MDL Doc. 1835, 1908, 6980; Related Case 11-12, 34) NPC moved at the same time to dismiss this case for failure to comply with Rule 25(a), Fed. R. Civ. P. and the Case Management Order (CMO) in this multi-district litigation. (MDL Doc. 6980; Related Case 34)

A plain reading of NPC's arguments in support of its motion to vacate and dismiss reveals that the arguments in this case are the same as those in the fourteen cases that were the subject of the Magistrate Judge's September 23, 2013 Report and Recommendation (R&R). (MDL Doc. 7011) More particularly, NPC argues in this case that: 1) the original substitution years ago was improper;

2) because the original substitution was improper, there has not been a proper plaintiff in this case since plaintiff's motion to substitute was improvidently granted in 2008; 3) plaintiff failed to comply with Rule 25(a) and the CMO. (MDL Doc. 6980; Related Case 34) The parties acknowledged the similarity of these cases in their October 1, 2013 joint motion to stay briefing requirements in eight of those fourteen cases — plus *Begley* presently before the court — when they argued jointly: “Because the District Judge’s ruling on the 9/23/13 R&R will likely affect the nature of or need for further briefing, it would be inappropriate and wasteful to continue briefing the pending motions at this time.” (MDL Doc. 7032; Related Case 36)

The District Judge granted the joint motion to stay on October 2, 2013. (MDL Doc. 7033; Related Case 37) Thereafter, the District Judge adopted and approved the Magistrate Judge’s R&R on November 5, 2013, the upshot of which was that NPC’s motions to dismiss were denied in all fourteen cases. (MDL Doc. 7107)

II. ANALYSIS AND CONCLUSIONS

As previously noted on p. 1, the arguments presented by NPC in its motion to vacate and dismiss in this case are the same as those in the fourteen cases previously addressed by the court. Because the arguments are the same, the Magistrate Judge incorporates herein by reference the analysis in his earlier R&R. (MDL Doc. 7011, ¶¶ II.B-C, pp. 5-8) Given that the arguments in this case are the same as they were in the fourteen earlier cases, the District Judge’s order adopting and approving the Magistrate Judge’s previous R&R should be extended to NPC’s motion to vacate and dismiss in this case.

RECOMMENDATIONS

For the reasons explained above, the Magistrate Judge recommends that NPC’s motion to

vacate and dismiss (MDL Doc. 6980; Related Case 34) be **DENIED**, and that the specific actions ordered by the District Judge in his November 5, 2013 order (MDL Doc. 7107) be extended to include this case.

Under Rule 72(b) Fed. R. Civ. P., any party has fourteen (14) days from service of this R&R within which to file with the District Court any written objections to the proposed findings and recommendations made herein. Any party opposing shall have fourteen (14) days from receipt of any objections filed regarding this R&R within which to file a response to said objections. Failure to file specific objections within fourteen (14) days of receipt of this R&R may constitute a waiver of further appeal of this R&R. *Thomas v. Arn*, 474 U.S. 140, *reh'g denied*, 474 U.S. 1111 (1986).

ENTERED the 14th Day of November, 2013.

/s/Joe B. Brown
Joe B. Brown
United States Magistrate Judge